IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

LOLA HANADA, an unmarried Individual and CRAIG B. HANADA, a married individual,	)	No. 63604-9-I
Respondents,	)	UNPUBLISHED OPINION
v.	)	
JAMAL JONES, OVERSEER OF THE PRESIDING PATRIARCH OF HAROMBEE MINISTRIES,	)	
Appellant.	)	FILED: March 22, 2010

SCHINDLER, C.J. — In this appeal from a summary judgment on a promissory note, Jamal Jones contends summary judgment was improper because fact questions exist as to whether the note was part of a joint venture. Because the record contains neither competent nor adequate evidence of a joint venture, and because Jones's other claims were not preserved and/or lack merit, we affirm.

FACTS

In January, 2006, Lola Hanada sold her home to Mary Mitchell for $310,000. Lola received $266,450 and a promissory note in the amount of $31,000 from Mitchell. A few days later, Mitchell sold the property to appellant Jamal Jones.

On February 2, 2006, the Hanadas loaned Jones $110,000 in exchange for a promissory note and a deed of trust. The note required full payment of the balance due by December 31, 2006. According to the Hanadas, Jones needed the loan to

make improvements to the property for a resale. In consideration of Jones's promise under the note, the Hanadas deposited $66,440.22 into Jones's bank account, released Mitchell from her $31,000 obligation under her note, and authorized reconveyance of the Mitchell Deed of Trust against the property.

When Jones failed to make payments under a purchase money loan obtained by Mitchell to purchase the property, the lender foreclosed and the property was sold at a trustee's sale. There were no excess proceeds available to pay the amount due under the Hanadas' loan to Jones. Because Jones had not made the payment due on that loan as well, the Hanadas filed this action for the principal and interest due under the note. Jones answered, alleging that the loan was part of a joint venture and asserting various counterclaims.

In November, 2007, Jones moved for summary judgment dismissing the complaint. He argued that the note was part of a failed joint venture, that the parties had agreed to share any profits or losses from the venture, and that the Hanadas were therefore not entitled to recover on the note as a matter of law. In support, Jones filed a Disclosure Certificate that stated in part:

> Leah Hanada contacted this Defendant with respect to the property of Lola Hanada for the prospect of putting together a single joint venture arrangement to obtain a maximum sales return and a mutual profit from the property of Lola Hanada, located at 13 15 South Hanford Street, in Seattle, Washington. Unfortunately, the venture failed and all the parties were denied their prospective profits.

The certificate stated it was made "upon oath," but was neither notarized nor signed under penalty of perjury.

In February, 2009, the Hanadas filed their own motion for summary judgment. In attached declarations, Lola and Craig alleged that "[t]here was no agreement with Jones that we would share in the profits and losses of Jones's remodel project" and denied having "any input into Jones's plans to remodel and refurbish the Property . . . ." In response, Jones served a document entitled "Defendant's Answer and Opposition to Plaintiff's Motion for Summary Judgment" on respondents shortly before the summary judgment hearing. Although this document is not in the record before this court, respondents allege, and Jones does not dispute, that it was not accompanied by a declaration or other evidence supporting Jones's factual allegations.

The superior court granted the Hanadas's motion for summary judgment. Jones appeals.

DECISION

We review a summary judgment order de novo, engaging in the same inquiry as the trial court and viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 501, 115 P.3d 262 (2005). Summary judgment is proper only if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c); Hearst, 154 Wn.2d at 501. The moving party bears the initial burden, but once it submits adequate affidavits, the

nonmoving party must set forth specific facts rebutting the moving party's allegations and establishing the existence of a genuine issue of material fact. Michael v. Mosquera-Lacy, 165 Wn.2d 595, 601, 200 P.3d 695 (2009). Bare allegations unsupported by any evidence are insufficient to raise a genuine issue of fact. Meissner v. Simpson Timber Co., 69 Wn.2d 949, 955-56, 421 P.2d 674 (1966); Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992) (nonmoving party may not rely on "conclusory allegations, speculative statements, or argumentative assertions"). Applying these principles here, we conclude the court did not err in granting summary judgment.

The Hanadas carried their initial burden below by alleging facts establishing their right to judgment as a matter of law, and by supporting those allegations with sworn declarations. The burden then shifted to Jones to submit evidence demonstrating an issue of material fact. Although Jones alleged that the loan was part of a joint venture agreement, there is no competent evidence supporting that allegation in the record. The "Disclosure Certificate" attached to Jones's motion for summary judgment was neither notarized nor signed under penalty of perjury and was thus not in proper form. Wilkerson v. Wegner, 58 Wn. App. 404, 408 n.3, 793 P.2d 983 (1990) (unsworn certifications that are not signed under penalty of perjury are not competent proof in a summary judgment proceeding); RCW 9A.72.085(1) (a declaration in support of summary judgment must contain a recitation that the declaration "is certified or declared by the person to be true under penalty of perjury."). Furthermore, Jones's conclusory statements in the certificate, as well as

the other portions of the record he cites, are insufficient to establish issues of fact on the elements of a joint venture. See Paulson v. County of Pierce, 99 Wn.2d 645, 664 P.2d 1202 (1983) (joint venture requires a contract, a common purpose, a community of interest, and equal rights to a voice and control.). He thus failed to carry his burden below.

Citing United States v. Remsing, 874 F.2d 614 (9th Cir. 1989), Jones contends we cannot conduct a de novo review without a transcript of the summary judgment hearing. Remsing is inapposite. That case involved a federal court's de novo review of evidentiary proceedings before a magistrate. There is no indication that any testimony was presented at the hearing at issue in this case. Furthermore, Jones could have prepared a narrative report of proceedings in lieu of a transcript but has not done so. RAP 9.3.

Jones also claims the court manifested "a pro se bias" when it said that his "pro se pleadings were not in proper form," but then said nothing regarding the absence of an issue statement in opposing counsel's motion for summary judgment. Trial judges are presumed to perform their functions regularly and properly without bias or prejudice,[1] and a party claiming otherwise must support the claim with evidence of the judge's actual or potential bias.[2] Jones's evidence falls well short of this standard. In light of the established rule that pro se litigants will be held to the

[1] Kay Corp. v. Anderson, 72 Wn.2d 879, 885, 436 P.2d 459 (1967); Jones v. Halvorson-Berg, 69 Wn. App. 117, 127, 847 P.2d 945 (1993).

[2] State v. Dominguez, 81 Wn. App. 325, 328-29, 914 P.2d 141 (1996); State v. Bilal, 77 Wn. App. 720, 722, 893 P.2d 674 (1995)

same standards as attorneys,[3] and given the technical nature of opposing counsel's noncompliance with the rules, Jones's allegations do not demonstrate either actual or potential bias.

Jones asserts several additional arguments for the first time on appeal. But contentions that were neither raised by the parties nor considered by the trial court at summary judgment will not be considered for the first time on appeal. Ferrin v. Donnellefeld, 74 Wn.2d 283, 285, 444 P.2d 701 (1968); Concerned Coupeville Citizens v. Town of Coupeville, 62 Wn. App. 408, 413, 814 P.2d 243 (1991); RAP 9.12 ("On review of an order granting . . . a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court."). Jones's new arguments are therefore not properly before us.

The Hanadas' request for attorney fees and costs under the terms of the note is granted, subject to their compliance with RAP 18.1.

Affirmed.

Schindler, C.J.

WE CONCUR:

Appelwick, J.

Cox, J.

[3] See Westberg v. All-Purpose Structures, Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997) (pro se litigants are held to the same rules of procedure and substantive law as attorneys).